



Buyer Actions That Can – **KILL** – A Successful Business

California Association of Business Brokers
2023 Annual Productivity Conference
Friday September 29, 2023 2:00 PM – 3:30 PM

Presented By:
Monty W. Walker CPA, CGMA, CBI
Walker Business Advisory Services



What Up CABB?



BEST ANIMATIONS



What Up CABBB?

Passion

- ▶ Have **Passion** in your work. It shows you love what you do.

“Concentrate on what you do well, and do it better than anybody else.”

- John Schnatter

founder of Papa John's Pizza

What is Your Lane?



What is Your Lane?



What is Your Lane?



Same Destination – Different Experience



One of the great challenges in life is:

“Knowing enough to think you are right but not enough to know you are wrong”

Neil deGrasse Tyson

Develop a Team

- ▶ Team Approach is ===> Critical
- ▶ Remember:

Even the Lone Ranger had Tonto

Improve Intentionally

- ▶ Constantly educate yourself
- ▶ Seek out learning opportunities

Perfect I will never be but ever improving I hope to be

Keep the Lead

- ▶ You are the quarterback.
- ▶ Never Forget this Fact!!!

Listen

To connect with client's hearts, use your ears

- ▶ You have to be **SILENT** to **LISTEN**.
- ▶ Both words are formed from the same letters.

- S-i-l-e-n-t

- L-i-s-t-e-n





My wife took this picture and text it to me with the following question:

Is this a special club for accountants??

Actions Taken By Buyers That

KILL

A Successful Business

Buyer Actions that can **KILL** a Successful Business

(1) Outsourcing tasks that were performed in-house by the prior owners

- ▶ This is not a decision to make without first gaining a significant amount of experience in running the business.
- ▶ That outsourced person may very likely help in other areas of the business when needed.
- ▶ That outsourced person may also have key relationships with other staff or customers.

Buyer Actions that can **KILL** a Successful Business

(2) Refuse to develop a relationship with the customers

- ▶ The customers do not care that the Buyer is overwhelmed by the workload.
- ▶ The Customers do not care that the Buyer does not really understand their question.
- ▶ **Here is a tip:** The business only exists because of the customers.

Buyer Actions that can **KILL** a Successful Business

(3) Replace Key Employees

- ▶ Struggles can occur with existing employees. The situation is new for the Buyer but it is also new for the existing employees.
- ▶ Spend time operating the business before making staff changes.
- ▶ Without realizing it, the Buyer can replace the very person or persons that all of the customers and vendors had grown to think of as the “business.”

Buyer Actions that can **KILL** a Successful Business

(4) Refuse Training From Old Owner

- ▶ Why would anyone buy a business and then assume from day one that he/she can run it without help from the new owner? Yet, this happens.
- ▶ A Buyer should treat spending time with the prior owner as gold.
- ▶ A Buyer should listen to everything the prior owner says and then make adjustments and changes after the buyer gains experience running the business.

Buyer Actions that can **KILL** a Successful Business

(5) Absentee Owner

- ▶ Without explanation, a new owner will delegate to the employees most, if not all, of the day-to-day responsibilities.
- ▶ The prior owner worked 50+ hours a week and the Buyer attempts to work 30 hours or less per week
- ▶ Employees just do not have the same care and concern as the owner.
- ▶ Eventually, without a steady hand on the controls, the business will begin to falter.

Buyer Actions that can **KILL** a Successful Business

(6) Make significant operating changes in the first year

- ▶ **Fact** → The Buyer is just too inexperienced to make any significant operating changes in the first year.
- ▶ The Buyer will be tempted to make changes, just don't do it!
- ▶ Don't reorganize the work force.
- ▶ Don't change the commission structure.
- ▶ Don't retool the employer's manual.
- ▶ Just don't do it. Wait. Observe. Learn.
- ▶ The prior ownership was successful for a reason. Don't make any changes for a year.

Buyer Actions that can **KILL** a Successful Business

(7) Purchase expensive and modern equipment to replace old, outdated equipment

- ▶ New modern equipment comes with a cost greater than purchase price.
- ▶ Can the staff operate the equipment?
- ▶ Is the additional production capacity offered by the new equipment needed?
- ▶ Without proper planning, cash gets constrained paying for equipment that was supposed to enhance cashflow.
- ▶ This type of issue is common with manufacturing businesses that have problems.

Buyer Actions that can **KILL** a Successful Business

(8) Having Limited Capital to Operate the Business

- ▶ A Buyer should develop projections when buying a business.
- ▶ These projections should include realistic with projected cash flow that can be used to manage the cash flow of the business.
- ▶ However, many failed business owners either do not undertake this step, or they use projections that are based on a fantasy.
- ▶ **Working Capital is the LIFE BLOOD of a business.**

Buyer Actions that can **KILL** a Successful Business

(9) The Buyer allowing his/her ego to make all the decisions, or put “his/her stamp” on the business

- ▶ The Buyer put the deal together and bought the business. The Buyer is now the boss.
- ▶ It is human nature to want to make all the decisions and to put his/her own brand of management in place.
- ▶ Don't do it. Don't demand that things be done your way solely because of ego.
- ▶ When a decision needs to be made, the Buyer wants to be thoughtful and to appear decisive.

Buyer Actions that can **KILL** a Successful Business

(10) Refuse to develop a relationship with the vendors

- ▶ Without vendors, a business does not have a steady supply of inventory or supplies.
- ▶ Without those things, a business cannot stay in business.
- ▶ A Buyer should get to know his/her vendors.
- ▶ Do not allow the relationships with vendors to deteriorate. It is just too costly in the end

Buyer Actions that can **KILL** a Successful Business

(11) Hire your friends and family to help run the business

- ▶ Employees are very smart.
- ▶ Typically, they have more experience in the industry than the Buyer does.
- ▶ So, when a Buyer hires his/her your brother-in-law or best friend to run the warehouse, an enemy is made out of every other employee.
- ▶ This is particularly true when the newest employee-family member is hired to supervise key employees.
- ▶ It has never worked. It will never work.

Buyer Actions that can **KILL** a Successful Business

(12) A failure to understand the business is really a group of interdependent “systems.”

- ▶ A Buyer decides to replace an older employee with a lower-paid younger worker who the Buyer believes will provide a better return.
- ▶ This decision occurs without fully considering the impact the loss of the older worker will have on the company as a whole.
- ▶ Who used the older worker as a mentor or sounding board?
- ▶ What if that older worker is the glue that has held together the production team for twenty years?
- ▶ All of the people, product lines, divisions, equipment, etc. are inter-related and inter-dependent.
- ▶ **Seemingly minor changes can lead to unexpected and surprising results. Be very careful.**

ROBS Corporations

“Rollovers as Business Startups”

Certain Compliance Issues

SBA's Position – ROBS and EPC/OC Structure

- ▶ This is a structure in which an Entrepreneur forms a Real Estate Entity to hold and lease real estate to the Entrepreneur's Operating Company
- ▶ The application cannot be structured as an EPC/OC. [13 CFR § 120.111(a)(6)]

EPC – Eligible Passive Company

OC – Operating Company

SBA regulations require each 20% or more owner of the EPC and each 20% or more owner of the OC to guarantee the loan, and the regulation does not provide for an exception.

DOL's Position – ROBS and EPC/OC Structure

- ▶ This is a structure in which an Entrepreneur forms a Real Estate Entity to hold and lease real estate to the Entrepreneur's Operating Company
- ▶ Prohibited Transaction per 29 C.F.R. § 2509.75-2 (Interpretative Bulletin 75-2)
- ▶ This regulation states that when a retirement plan invests in an entity (the "C" corporation) and the entity will then engage in a transaction with a disqualified party (the Real Estate Entity) on a pre-arranged basis, then that is tantamount to a prohibited transaction.

ROBS Corporations

- ▶ Loans extended from a ROBS Corporation to another entity owned by the entrepreneur is a “Prohibited Transaction.”
- ▶ Loans extended from a ROBS Corporation to the entrepreneur can very likely be a “Prohibited Transaction.”
- ▶ A ROBS Corporation guarantying the debt of a non-ROBS entity owned by the entrepreneur is a “Prohibited Transaction.”
- ▶ A ROBS Corporation’s asset serving as collateral for the debt of a non-ROBS entity owned by the entrepreneur is a “Prohibited Transaction.”

ROBS Corporations

- ▶ A ROBS corporation leasing real estate or other assets from the entrepreneur or from an entity owned by the entrepreneur is a “Prohibited Transaction.”
- ▶ Personal use of a ROBS Corporation’s assets by the entrepreneur will potentially result on a “Prohibited Transaction.”
- ▶ Entrepreneur’s compensation must be reasonable. Excessive compensation to the entrepreneur from a ROBS Corporation will result in a “Prohibited Transaction.”

ROBS Corporations

Regulatory Cites:

- ▶ Per IRC Section 4975(c)(1)(D), a “prohibited transaction” occurs with the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan
- ▶ Per IRC Section 4975(c)(1)(E), a “prohibited transaction” means any direct or indirect act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account.

ROBS Corporations

Regulatory Cites:

- ▶ ERISA Section 406(a)(1)(D) prohibits the direct or indirect transfer to, or use by or for the benefit of, a “Party in Interest” in interest of any assets of the plan.
- ▶ ERISA Section 406(b)(1) prohibits a fiduciary from “Self-Dealing” with the assets of the plan in his own interest or for his own account.

ROBS Corporations

Key Point

- ▶ A retirement plan fiduciary cannot directly or indirectly deal with the income or assets of a plan in his own interests or for his own account.
- ▶ This is “Self Dealing” which is --- **Prohibited**

Structured Installment Sale

Structured Installment Sale

A tax deferral and management solution provided by:

MetLife

and

Independent Life

Highlights

- ▶ Defer first payment up to 40 years
- ▶ No investment minimums or maximums
- ▶ Design payments as needed in the future, including future lump sums on identified dates.
- ▶ Index-linked, market-based growth, with a guaranteed floor to hedge against potential downturns.
- ▶ For use in the sale of businesses, property, appreciated assets (art collections, vintage vehicles, etc.)
- ▶ Backed by highly rated life insurance markets.

MetLife “Fixed Annuity”

- ▶ This is a -- Fixed Option.
- ▶ Requires payments to start within 12 months of closing; and
- ▶ Offers a yield of around 4.25% based on the design.
- ▶ Payments will never change with this option.

Independent Life “Indexed-Linked Annuity”

- ▶ This is a -- Index-Linked Option.
- ▶ Offers greater flexibility, with first payment deferral up to 40 years; and
- ▶ Yields between 6-11% based on the design.
- ▶ There is a guaranteed floor payment with uncapped, index linked growth with this option, based on market performance.
- ▶ Annuity linked to “Franklin BofA World Index™” powered by the quantitative insights of Franklin Templeton and Bank of America

Key Points



Simple Process

- ✓ No complicated extra steps to an already stressful process.
- ✓ The seller is able to sell to an interested buyer with a few extra documents added to the purchase agreement.

Key Points



Payments Safeguarded

- ✓ Buyer transfers their payment obligation to a A+ rated life insurance company.
- ✓ The sale acts as a normal sale for the buyer and an installment sale for the seller.

Key Points



Compliant & Secure

- ✓ Sales proceeds protected from market volatility.
- ✓ Tax efficient solution is backed by a top A+ rated life insurance company.

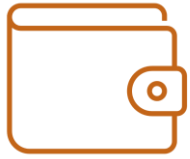
Key Points



NO like-kind replacement requirements

- ✓ A Section 1031 Exchange requires like-kind property replacement within strict time constraints after selling.
- ✓ These requirements do not apply.

Key Points



NO out-of-pocket expenses

- ✓ There are no upfront fees for either the seller or buyer.

Key Points



NO Management Fees

- ✓ No ongoing costly management or administration fees.

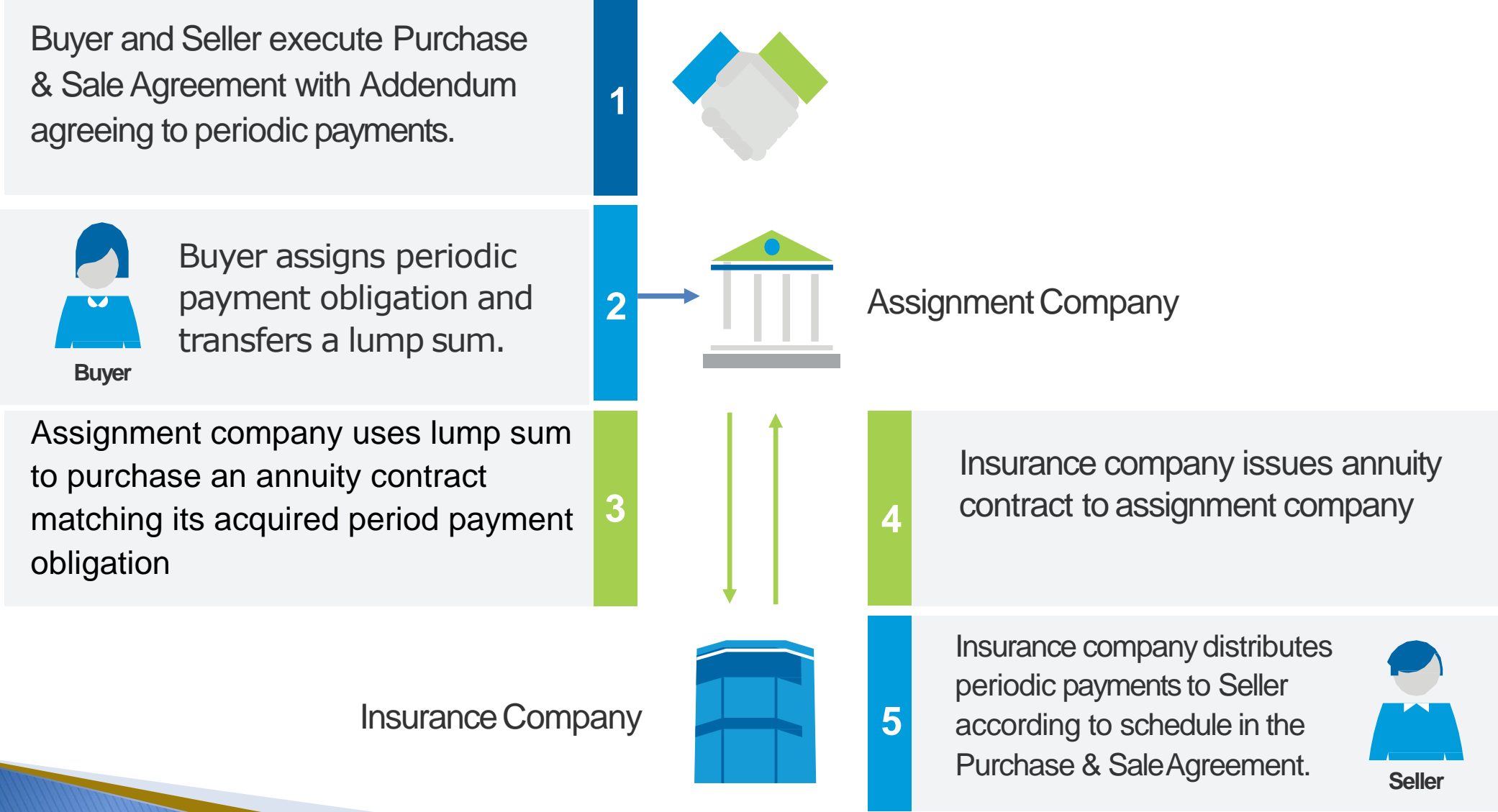
Key Points



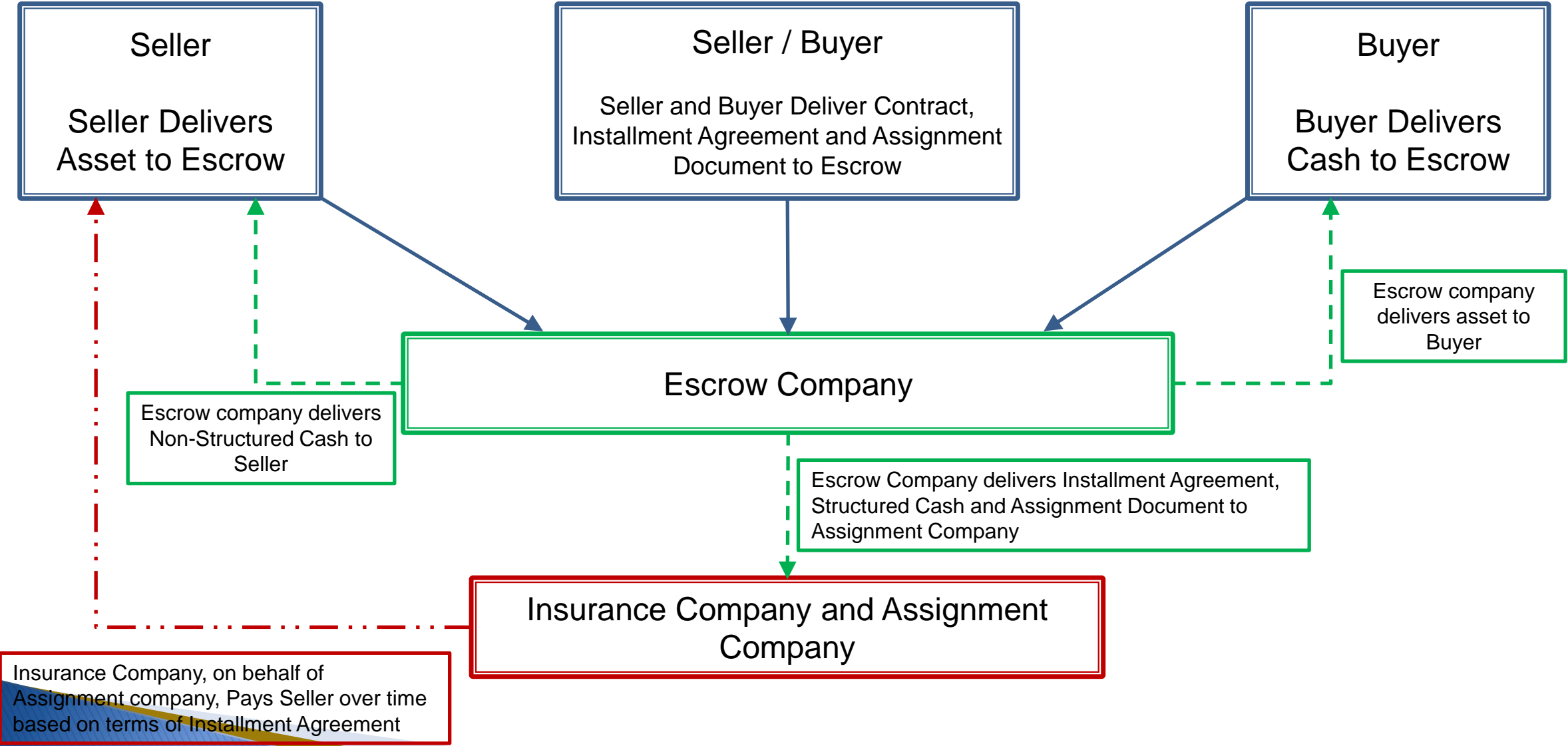
NO questionable complex trust structure

- ✓ Straight forward clear and concise application.
- ✓ Underpinned by regulated life insurance industry and codified regulatory framework.

How the structured installment sale works from a practical perspective.



Structured Sale Process Flow



Final Points

- ▶ **Supported by the insurance industry regulatory framework**
- ▶ **Tax deferral based on Internal Revenue Code Section 453**
- ▶ **Solid funding sources with MetLife and Independent Life**

You can have confidence suggesting this solution to your clients!!!

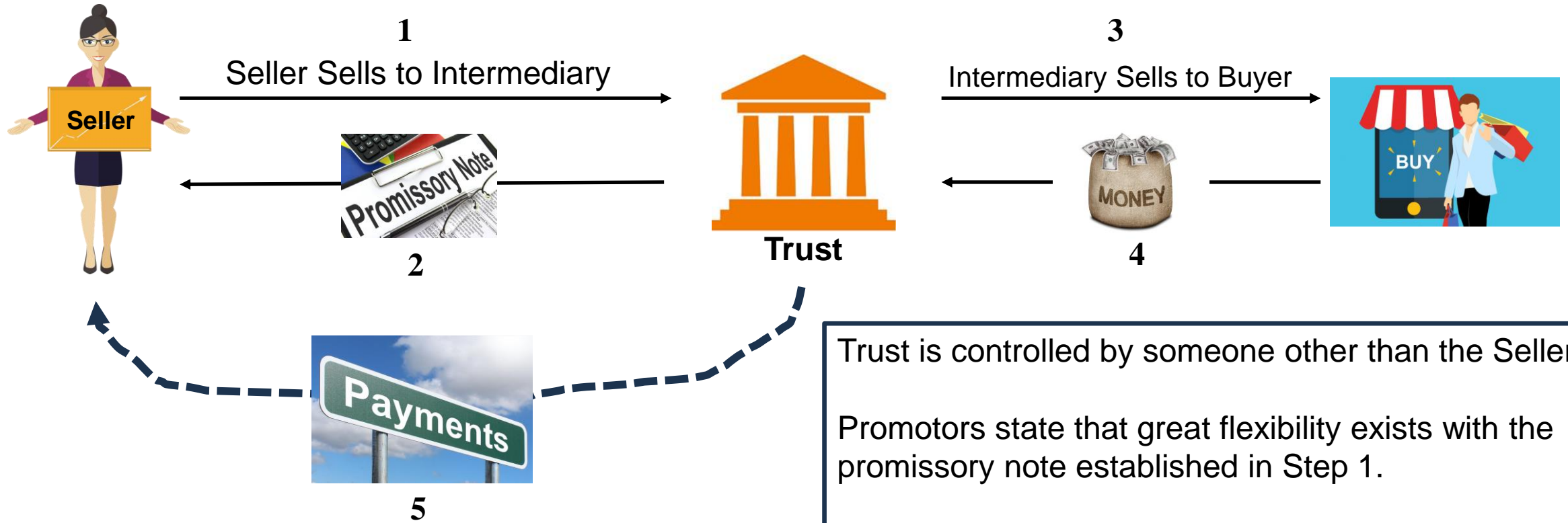


Deferred Sales Trust

Based, in part, on IRC 453 Installment
Sale Provisions

“Assumably”

General Overview



Trust is controlled by someone other than the Seller.

Promotors state that great flexibility exists with the promissory note established in Step 1.

This “**Great Flexibility**” is based on the Trust Trustee acting on behalf of the Seller’s request.

The Trust Trustee does --- What????



DST Marketing Claims

Regarding the promissory note and trust terms:

- ▶ Are changes in income payments permitted?
- ▶ Are lump sums available for unanticipated events?
- ▶ Can established promissory note terms be shortened or extended indefinitely?
- ▶ Can payments be temporarily suspended after start date?
- ▶ Can partial or interest only payments occur to preserve Principal?
- ▶ **DST answer to all these is ==> YES.**

DST Provides “Great Flexibility” ????????

- ▶ For this type of Trust structure to work, the Trustee and ongoing management of the Trust must be completely independent of the Seller.
- ▶ This means the Seller cannot influence the Trustee.
- ▶ But somehow the entire structure provides “**Great Flexibility**” to the Seller.

DST Provides “Great Flexibility” ????????

- ▶ DST claims “**Great Flexibility**” occurs by the Trustee deciding to act on a Seller’s request as opposed to being required to act.
- ▶ How does this though correlate to the DST marketing claims regarding all the “**Great Flexibility?**”
- ▶ Something can’t already be designed with flexibility and at the same time be under complete discretionary control of a Trustee

Great Flexibility ≠ Trustee Control

DST Recap

- ▶ The Seller transfers control of the Seller's assets and ultimately funds to another party. **A Risky Move!!**
- ▶ Somehow the Seller influences the Trust Trustee. **Highly Questionable!!**
- ▶ The structure is marketed to be "Greatly Flexible" yet the Trust Trustee is supposed to have absolute control! **Does this even make sense?**
- ▶ Are the "Great Flexibility" marketing claims on the radar of the IRS?

DST Final Point



END

About The Presenter



Monty W. Walker
CPA, CGMA, CBI
(940) 322-5086
mwalker@walkeradvisory.com
www.walkeradvisory.com

- Works with Business Sellers, Business Buyers and their various advisors, such as Business Intermediaries, Accountants and Attorneys, to manage the unique financial, tax, planning and procedural matters associated with Buying and Selling a business. **He does not serve as a Business Intermediary. He only provides Advisory Services.**
- Has a comprehensive business background in the private closely-held sector spanning over 30 years which includes experience in both startups and established entities
- Professionally manages and administers retirement plans including plans which enable entrepreneurs to use their accumulated retirement money as a business capitalization source while preserving tax deferrals and without incurring penalties. His advisory services in the qualified money arena include solutions using of Self-Directed IRAs and Small Business Investment 401(k) Plans.
- Developed and assists Entrepreneurs throughout the country with a unique proprietary comprehensive transaction planning review resulting in a deliverable entitled --- Transaction Structuring Report.
- Works with clients throughout the country rendering advisory support for Business Transactions, Business Exit Strategies, Business Tax Planning and Business Transition Planning.
- Subject Matter Expert for the International Business Brokers Association in the area of Business Transaction Taxation, Structuring and Planning. He is also an approved instructor for the International Business Brokers Association, the Texas Real Estate Commission and the Texas Department of Insurance.
- Authored various business transfer taxation and structuring courses and various other business transfer related workshop topics which he instructs for these organizations.
- Due to his background in the area of business planning and business transfers he is often referred to by his clients and colleagues as a --- “Business Transaction CPA”
- Is a member of the American Institute of Certified Public Accountants, the International Business Brokers Association, the M&A Source, the Texas Association of Certified Public Accountants, the Texas Association of Business Brokers and Alliance of Mergers & Acquisitions Advisors
- Certified Public Accountant, Chartered Global Management Accountant, Certified Business Intermediary